

Appl. No.: 10/005,360
Group Art Unit: 1751
Applicants' Reply to Paper No. 8

REMARKS

Claims 1-20 are currently pending in the present application.

Claims 15 and 20 have been amended herein. Claim 15 has been amended, in accordance with the Examiner's suggestion, to depend from claim 14 as opposed to claim 7. Claim 20 has been amended to specify that the hydroxycarboxylic acid partial ester therein is an ester of a hydroxycarboxylic acid and a fatty alcohol whose hydrocarbon portion corresponds to that of the R' group of the alk(en)yl oligoglycoside claimed therein. Support for this amendment can be found in the claims as originally filed, and in the Specification, for example, at page 4, lines 23-25. No new matter has been introduced. A complete listing of all claims ever presented is included herein in accordance with 37 C.F.R. §1.121(c). Entry of the amendments to claims 15 and 20 is therefore proper and respectfully requested.

In Paper No. 8, the Examiner rejects claim 15 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim that which Applicants regard as their invention. Specifically, the Examiner points out that there is no antecedent basis for the reference to --R'--. As set forth above, in accordance with the Examiner's suggestion, Applicants have amended claim 15 to depend from claim 14, rather than claim 7, thus correcting the lack of antecedent basis. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

In Paper No. 8, the Examiner rejects claims 1-20 under 35 U.S.C. §102(a), as being anticipated by PCT Publication No. WO01/21140 of Schmid, *et al.* (hereinafter referred to as "Schmid"). In Paper No. 8, the Examiner also rejects claims 1-20 under 35 U.S.C. §102(a), as being anticipated by European Patent Publication No. EP1083217 of Nalborczyk, *et al.* (hereinafter referred to as "Nalborczyk").

Schmid was published on March 29, 2001. Nalborczyk was published on March 14, 2001. Applicants have claimed priority under 35 U.S.C. §119(a)-(d) of German Patent Application No. 10055517.9 filed on November 9, 2000. A certified copy of the German priority application was received by the Office in the instant application, as acknowledged by the Examiner on page 1 of Paper No. 8. The Specification of the instant application, as filed on

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November 8, 2001, is an English translation of the certified priority document. Thus, in accordance with 35 C.F.R. §1.55 and Section 706.02(b) of the M.P.E.P., Applicants submit that the foreign priority claim has been perfected and that Applicants are thus entitled to the benefit of the November 8, 2000 German filing date. Accordingly, both the Schmid reference and the Nalborczyk reference have been antedated.

Thus, while not necessarily agreeing with the Examiner that the content of either the Schmid or the Nalborczyk reference anticipates the present invention, Applicants submit that both references have been antedated for the purposes of a rejection under 35 U.S.C. §102(a) and/or (e). As neither reference qualifies as prior art under 35 U.S.C. §102(b), Applicants respectfully request withdrawal of the rejections based upon the Schmid and the Nalborczyk references.

In Paper No. 8, the Examiner rejects claims 1-20 under 35 U.S.C. §102(e), as being anticipated by U.S. Pat. No. 6,235,702 of Ansmann, *et al.* (hereinafter referred to as "Ansmann"). In Paper No. 8, the Examiner also rejects claims 1-20 under 35 U.S.C. §102(b), as being anticipated by PCT Publication No. WO97/46209 of Ansmann, *et al.* (hereinafter referred to as "the Ansmann PCT"). As noted by the Examiner, Ansmann and the Ansmann PCT are equivalents. (See, Paper No. 8, p. 4, ¶ 7). More specifically, the Examiner argues that the Ansmann references disclose aqueous compositions containing C₆₋₂₂ fatty alcohol esters of hydroxy-functionalized carboxylic acids and a surfactant which may include oligoglycosides. On this basis, the Examiner argues that the claims are anticipated.

Applicants respectfully disagree and traverse the Examiner's rejections and the arguments and contentions in support thereof for the following reasons. In order for a rejection under 35 U.S.C. §102 to be proper, each and every element of the claimed invention must be taught, either expressly or inherently, in a single prior art reference. (See, e.g., M.P.E.P. §2131). Applicants submit that neither Ansmann reference teaches each and every element of the claimed methods. Moreover, the Ansmann references fail to teach each and every element of the claimed composition, as amended.

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One embodiment of Applicants' claimed invention is directed to methods of enhancing foam properties and skin compatibility of a cleaning composition, wherein the method includes: (a) providing a cleaning composition which comprises an alk(en)yl oligoglycoside; (b) providing a hydroxycarboxylic acid partial ester; and (c) combining the cleaning composition and the hydroxycarboxylic acid partial ester.

The Ansmann references are directed to aqueous pearlescent concentrates for cosmetic compositions, which concentrates contain a C₆₋₂₂ fatty alcohol ester of an optionally hydroxy-functionalized, carboxylic acid and "a surfactant" which may be selected from thousands of various surfactants from among the classes of anionic, nonionic, cationic, ampholytic and/or zwitterionic surfactants.

The Ansmann references fail to teach a method wherein a cleaning composition which specifically contains an alk(en)yl oligoglycoside is provided, and the foam properties and skin compatibility of the cleaning composition are enhanced by combining the composition with a hydroxycarboxylic acid partial ester.

Furthermore, with respect to the embodiment of Applicants' claimed invention directed to a cleaning composition which comprises: (a) an alk(en)yl oligoglycoside corresponding to the general formula (I); and b) a hydroxycarboxylic acid partial ester, wherein the hydroxycarboxylic acid partial ester comprises an ester of a hydroxycarboxylic acid and a fatty alcohol having a hydrocarbon portion which corresponds to the glycoside alk(en)yl radical represented by R', Applicants respectfully submit that the Ansmann references contain no such teaching.

Ansmann makes no reference to specifically selecting an alk(en)yl oligoglycoside having a particular alk(en)yl group and combining it with an ester of a hydroxycarboxylic acid and a fatty alcohol, wherein the hydrocarbon portion of the fatty alcohol corresponds to glycoside alk(en)yl group. Given the absence of any such teaching, it cannot be said that the Ansmann references anticipate this claimed embodiment.

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Accordingly, Applicants submit that the Ansmann references fail to anticipate the claimed invention and respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. §102, based upon the Ansmann references.

Finally, in Paper No. 8, the Examiner rejects claims 1-3, 5-7, 9-12, 14-15, 17-18 and 20 under 35 U.S.C. §102(b), as being anticipated by PCT Publication No. WO97/46653 of Pi Subriana, *et al.* (hereinafter referred to as "Pi Subriana"). Specifically, the Examiner contends that Pi Subriana discloses a composition which contains an ester of a hydroxycarboxylic acid and a fatty alcohol polyglycolether, and a surfactant such as an alk(en)yl oligoglycoside. On this basis, the Examiner argues that the claims are anticipated.

Applicants respectfully disagree and traverse the Examiner's rejections and the arguments and contentions in support thereof for the following reasons. Pi Subriana fails to teach each and every element of the claimed invention. More particularly, Pi Subriana is directed to compositions which contain different hydroxycarboxylic acid esters than those set forth in the presently claimed invention.

Pi Subriana is directed to compositions which contain an ester of a hydroxycarboxylic acid selected from the group consisting of tartaric acid, malic acid and citric acid and a fatty alcohol polyglycolether of the formula, $R^1O(CH_2CH_2O)_nH$, wherein n is a number of from 20 to 150. The hydroxycarboxylic acid esters disclosed in Pi Subriana are highly ethoxylated compounds containing, on average, from 20 to 150 moles of ethoxylate, as clearly indicated by the definition of the subscript variable " n ". The presently claimed invention is directed to methods using hydroxycarboxylic acid esters and compositions containing hydroxycarboxylic acid esters which are not highly ethoxylated as disclosed in Pi Subriana. The types of hydroxycarboxylic acid esters suitable for use in the presently claimed invention are set forth in the instant Specification at page 4, line 1-27. Hydroxycarboxylic acid esters of highly ethoxylated, *i.e.*, $n = 20-150$, fatty alcohols are not included. Accordingly, the claimed subject matter is different.

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Thus, Applicants submit that Pi Subriana fails to anticipate the claimed invention and respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §102, based upon Pi Subriana.

In view of the amendment to claim 15 made herein, Applicants submit that claim 15 fully complies with 35 U.S.C. §112. In view of the amendment to claim 20 made herein and the comments set forth above, Applicants submit that all pending claims patentably distinguish over the prior art of record and known to Applicants, either alone or in combination. Accordingly, reconsideration, withdrawal of the rejections and a Notice of Allowance for all pending claims are respectfully requested.

Respectfully submitted,

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